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**From:** Smith, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F8CA6BA195244BC38B6E649F46632DFF-SMITH, JOHN]  
**Sent:** 8/29/2018 9:10:33 PM  
**To:** William Bider [KDHE] [William.Bider@ks.gov]  
**Subject:** RE: Came across this statement by US Senators on WINN Act

**“9. Must a State have its regulations in place before formally submitting an application for program approval?**

Review of State regulations is a critical part of the approval process for a State CCR permit program as the regulations form an important part of EPA’s determination that the program will be “at least as protective as” the federal CCR rule. Thus, EPA strongly recommends the State have regulations in place prior to formally submitting an application for program approval. Although the statute does not require final regulations to be in place as a prerequisite for program approval, not having those regulations in place could, in the end result in significant delays and legal complications.”

John J. Smith, Deputy Director  
Air & Waste Management Division  
EPA Region 7  
Desk 913-551-7845  
Cell 913-645-4672

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**From:** William Bider [KDHE] [mailto:William.Bider@ks.gov]  
**Sent:** Wednesday, August 29, 2018 8:43 AM  
**To:** Smith, John <Smith.John@epa.gov>  
**Subject:** RE: Came across this statement by US Senators on WINN Act

Thanks John. I believe this clearly describes the legislative intent of these Senators to give states authority to administer state permitting programs that offer certain flexibilities based upon site-specific conditions (see my highlight). That is exactly what Kansas is requesting. Can you share this with Jim Gulliford?

Bill Bider  
Director  
Bureau of Waste Management

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**From:** Smith, John [mailto:Smith.John@epa.gov]  
**Sent:** Tuesday, August 28, 2018 6:02 PM  
**To:** William Bider [KDHE] <William.Bider@ks.gov>  
**Subject:** Came across this statement by US Senators on WINN Act

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# Inhofe, Capito, Manchin, Hoeven Praise Inclusion of Coal Ash Provision in Bicameral, Bipartisan WIIN Deal

December 5, 2016

WASHINGTON - U.S. Sen. Jim Inhofe (R-Okla.), chairman of the Senate Environment and Public Works (EPW) Committee, and Sens. Shelley Moore Capito (R-W.Va.), Joe Manchin (D-W.Va.) and John Hoeven (R-N.D.), praised the bipartisan deal with the House of Representatives to include authorization for permit programs for the control of coal combustion residuals in the final Water Infrastructure Improvements for the Nation Act announced today. The provision makes several improvements to the coal combustion residuals section that was included in the version passed by the Senate on September 15 to better protect the rights of states that want to operate permit programs and to provide more certainty for the regulated community:

**“We’re pleased that the final WIIN package builds off the Senate passed provision and provides the authority that states have been seeking to regulate coal ash through authorized state permit programs,” the senators said. “This new permitting authority fixes the main problems with the recent coal ash regulation issued by the Environmental Protection Agency, by removing citizen suits as the sole means of enforcement and allowing states to tailor permit requirements on a case-by-case basis. We’re happy that we were able to work with our colleagues in the House and Senate on a bipartisan basis to get this important legislation across the finish line.”**

## Background

The Environmental Protection Agency (EPA) issued a final rule on Dec. 19, 2014, to regulate the management and disposal of coal combustion residuals from utilities as a nonhazardous waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA). Because of the limited authority under RCRA Subtitle D, the requirements of the EPA rule apply directly to facilities and are enforceable only by citizen suits, not through state or federal permit programs. This legislation amends RCRA to authorize State permit programs, subject to EPA approval and oversight, to regulate coal combustion residual units based on the technical standards in EPA’s rule or state-specific standards that are at least as protective as those in the EPA rule.

The changes in this legislation from the version passed by the Senate in September include:

- Extending the time period for when EPA must review authorized state programs from 5 years to 12 years;
- Extending the deadline by when EPA must approve a state’s programs from 90 days to 180 days to accommodate public notice and comment on a state’s application for program approval;
- Changing the authority of states to request EPA review of another state’s program;

- Mandating EPA to operate backstop permit programs in states that are not authorized, subject to the availability of appropriations.

This bipartisan, bicameral legislation was developed with input from states, the regulated community, environmental groups, and EPA.

John J. Smith, Deputy Director  
Air & Waste Management Division  
EPA Region 7  
Desk 913-551-7845  
Cell 913-645-4672